



April 15, 2011

SENT VIA EMAIL

California Fish and Game Commission
1416 Ninth Street
P.O. Box 944209
Sacramento, CA 94244-2090
Email: fgc@fgc.ca.gov

California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Email: director@dfg.ca.gov,
smastrup@dfg.ca.gov, eloft@dfg.ca.gov

Re: Center for Biological Diversity and John Muir Project Petition to List the Black-Backed Woodpecker

Dear Department and Commission:

We are writing to address some of the issues raised, and statements made, regarding the Petition to List the Black-Backed Woodpecker (“BBWO”) at the Commission’s April 6, 2011, meeting. As instructed by the Commission, the Department is currently conducting an update to its BBWO Petition Evaluation, and we offer the following information in order to assist the Department in doing so. If you have any questions, please contact us.

As an initial matter, at the April 6, 2011, Commission meeting, the “completeness” of the Petition seemed to be questioned by one of the government attorneys. This position is not supported by the law or facts. Pursuant to California Code of Regulations, section 670.1 (titled “Review of Petition for Completeness”), an “incomplete petition shall be returned to the petitioner by the commission staff within 10 days of receipt. A petition shall be deemed incomplete if it . . . fails to contain information in each of the required categories set forth in subsection (d)(1).” In this instance, not only did the Commission not return the Petition within 10 days of receipt, it accepted the Petition and submitted it to the Department for evaluation. Consequently, the Petition has already been accepted as complete. Similarly, the Department Evaluation never once states that the Petition is somehow incomplete.

In addition, Fish and Game Code, section 2072.3, states that:


Petitions shall include information regarding the population trend, range, distribution, abundance, and life history of a species, the factors affecting the ability of the population to survive and reproduce, the degree and immediacy of the threat, the impact of existing management efforts, suggestions for future management, and the availability and sources of information. The petition shall also include information regarding the kind of habitat necessary for species survival, a detailed distribution map, and any other factors that the petitioner deems relevant.

This is exactly what the Petition did. It provided information regarding all of the above-mentioned factors. Thus, there should be no issue whatsoever regarding whether or not the Petition is complete.

At the April 6th meeting, commenters also made several statements regarding the BBWO Petition that reflect an inaccurate understanding of the facts and science. The attached letter from Chad Hanson addresses these issues.

Again, Petitioners are available to discuss any BBWO issues should the Department be interested in doing so.

Respectfully submitted this 15th day of April, 2011,



Justin Augustine

On behalf of Petitioners, the Center for Biological Diversity and the John Muir Project